IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2149 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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STATE OF GUJARAT - Appellant(s)
Versus
NAGJI VARSANGJI BUKOLIA (THAKORE) - Opponent(s)

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Appearance :
MR KT DAVE, LD.APP for Appellant(s) : 1,
None for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 18/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. Heard Mr.K.T. Dave, learned Additional Public Prosecutor, appearing for the appellant-State.

2. The appellant-State has sought leave to appeal under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 23rd September, 2004 passed by the learned Additional Sessions Judge, Banaskantha at Deesa, in Sessions Case No.90 of 2002.

3. Mr.K.T. Dave, learned Additional Public Prosecutor, has taken us through the grounds of challenge as mentioned in paragraph no.5 of the memo of the appeal and Mr.Dave has also taken us through the findings recorded by the learned trial Judge for recording acquittal. The allegation against the respondent-orig.accused was that he had administered the country liquor adding some poisonous substance in it to Shravanji Mafaji Thakore (deceased) and as a result of which Shravanji Mafaji Thakore firstly became unconscious and thereafter, he was shifted to hospital, where he succumbed to death. Earlier there was some quarrel between the respondent herein and

Shravanji Thakore (deceased) and it was suspected that the respondent must have given liquor to Shravanji Thakore by adding some poisonous substance because nobody else was present when about 2/4 glass of liquor was consumed by Shravanji Thakore, is the case of the prosecution.

4. The learned trial Judge in first four paragraphs of his judgment has positively concluded that there is no evidence worth the nature under which it is possible to infer that any poisonous substance was either diluted or poured in the liquor, which Shravanji Thakore had consumed in presence of the respondent. It is in the evidence that about 75% people residing in village Asoda consume liquor and the deceased was one of them. It is in evidence that everybody from the family of the deceased including the mother and wife of the deceased suspected the respondent.

5. The victim-deceased was taken to hospital, where he was treated by Dr.Devraj Parsottam Sasani. The said Dr.Sasani has deposed (at Ex.12) that he had taken out some substance from the stomach of the patient (deceased) and given it to the police for analysis. It is observed that there was no poison and thus, the sample sent for analysis to Forensic Science Laboratory (Ex.23) also rules out the presence of any poisonous substance. So it appears that on mere suspicion, the complaint was filed and the respondent was chargesheeted. There was no scope for the learned trial Judge to link the respondent with the offence punishable under Section 302 of the Indian Penal Code or any other offence. It appears that a habitual drunkard ultimately has died under the influence of liquor when he was overdrunk. It is also in evidence that the deceased was lean and weak person and was not able to resist any shock and he was also not keeping well and the said fact has also come on record. For short, there is no merit in the

appeal and the same is required to be dismissed.

6. According to us, the learned trial Judge on the date of framing of the charge could have discharged the respondent as the Forensic Science Laboratory report must be there in the police papers. We are surprised as to how and why the appellant-State is filing acquittal appeals in such cases. The concerned authority who is taking decision for filing of appeal against the judgment and order of acquittal requires to be conservative, especially when the law in reference to appeal against the judgment and order of acquittal is very well settled. Unless it is positively mentioned in all submissions representing to the final authority that for the reasons mentioned in the note submitted to the authority and they have pointed out details about perversity or illegality in the finding of acquittal, the appeal against the judgment and order of acquittal should not be filed because it

unnecessarily burdens the record of the Court and expenses on the Government's exchequer. There should be at least an element of application of mind by the officers concerned who decide to file an appeal against the judgment and order of acquittal. If the tendency is to oblige somebody who wishes to have the order against the judgment and order of acquittal, it requires to be curtailed forthwith.

7. If such appeals are not filed, the genuine appeals can be preferred well in time and the office of the Public Prosecutor may also save its precious working hours. We have come across number of such appeals during the present sitting where the State has preferred worthless appeals against the judgment and order of acquittal. If need be, the highest authority in the Legal Department should start fixing the liability of the officers who are sending proposals to file acquittal appeal in baseless cases or where the judgment and order

of acquittal is found based on sound/good reasons and detailed discussions.

8. In view of above observations and discussion, we do not find any merit in this appeal and the leave to appeal is hereby refused and hence, the appeal stands dismissed.

9. The Registry is directed to send a copy of the present judgment to (i)Secretary, Legal Department and (ii)Secretary, Home Department, so that both these departments can take appropriate decision in this regard.

(C.K. Buch, J)

(K.A. Puj, J)

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